

REMARKS

Claims 1 to 14 are in the application. Claims 1 and 8 are in independent form. Reconsideration and further examination are respectfully requested.

In response to the Restriction/Election Requirement dated June 22, 2005, Applicant hereby provisionally elects to prosecute the Group I claims, namely Claims 1 to 7 and 14, with traverse. However, the restriction requirement is believed to be rendered moot for reasons discussed below. In addition, in response to the requirement to elect a species, Applicant hereby provisionally elects to prosecute the Species A claims, and the election is made without traverse. Applicant submits that Claims 1 to 14 read on Species A, namely Figure 3.

Applicant submits that the amendment to Claim 1 obviates the reasoning given in the Office Action for requiring restriction. Specifically, the Office Action alleges that the Group I claims and Group II claims are related as a subcombination and combination, respectively. (Office Action page 2). The Office Action further alleges, "the combination as claimed does not require the particulars of the subcombination as claimed because of arrangement of magnetic detection device on prolonged line as claimed." (Office Action page 2). The amendment removes the cited particulars from the alleged subcombination, namely Claim 1. Reconsideration and withdrawal of the restriction requirement and the election requirement are respectfully requested.

Alternatively, Applicant traverses the restriction requirement on the ground that there would not be undue burden in examining two groups of claims in a single application. MPEP § 808 makes clear that in order to require restriction between independent or distinct inventions, reasons for insisting upon a restriction requirement,

such as undue burden, must also be shown. Here, the Office Action alleges the groups are related as combination and subcombination. Regarding related inventions, MPEP § 808.02 explains:

“Where . . . the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions.”

In the present application, the Office Action alleges that the groups have acquired a separate status in the art. However, the Office Action does not provide evidence of separate status, such as citations to patents showing separate status, as required by MPEP § 808.02(B).

Therefore, it is not believed that there would be an undue burden in examining the claims of Groups I and II in a single application, since the two groups of claims are in the same class and subclass have not been shown to be so different as would require a burden on the Examiner that is significantly beyond that of the normal burdens of examination. For this additional reason, reconsideration and withdrawal of the restriction requirement are respectfully requested.

Regarding a formal matter, it is respectfully requested for the Examiner to indicate that the art cited in the Information Disclosure Statement dated June 11, 2004, has been considered.

In addition, it is respectfully requested for the Examiner to acknowledge receipt of the Japanese priority application filed in this case on July 15, 2004.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



Attorney for Applicant

Michael K. O'Neill

Registration No. 32,622

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-2200
Facsimile: (212) 218-2200

CA_MAIN 98661v1